

## 21 C.J.S. Courts § 247

Corpus Juris Secundum | May 2023 Update

### Courts

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### VII. Records

#### § 247. Nunc pro tunc entries

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#### West's Key Number Digest

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**An entry nunc pro tunc is an entry made of something that was previously done, to be effective as of the former date.**

An entry nunc pro tunc is an entry made of something previously done, to have effect as of the former date.<sup>1</sup> A court has the power to make such an entry.<sup>2</sup>

The function of a nunc pro tunc entry is to correct a clerical error,<sup>3</sup> or to state on the record a judicial action that has actually occurred,<sup>4</sup> but has been omitted from the record through inadvertence or mistake.<sup>5</sup> It is not its function to correct a judgment or ruling, as opposed to the record of that action,<sup>6</sup> nor to make the record show an action that has not occurred.<sup>7</sup>

Nunc pro tunc entries may be limited to court rulings and orders of record and are not available to correct notations or conversations that are not the court's actions.<sup>8</sup>

Nunc pro tunc corrections are available as a matter of right.<sup>9</sup> It is usually held that an entry nunc pro tunc may be made at any time.<sup>10</sup>

Nunc pro tunc entries may not be entered without some intrinsic basis.<sup>11</sup> They usually must be based on some writing that directly or by fair inference indicates the purpose of the entry sought.<sup>12</sup> A trial court may not consider extrinsic evidence if the written memorandum does not, on its face, disclose an error in the record.<sup>13</sup> However, there is also authority that nunc pro tunc entries may be made on any competent evidence,<sup>14</sup> even wholly outside the record.<sup>15</sup> An entry may be based on other evidence, oral or written, which is sufficient to establish that the entry is required to make the record reflect the truth.<sup>16</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

Federal courts may issue nunc pro tunc orders, i.e., now for then orders, to reflect the reality of what has already occurred, and such a decree presupposes a decree allowed, or ordered, but not entered, through inadvertence of the court. [Roman Catholic Archdiocese of San Juan, Puerto Rico v. Acevedo Feliciano](#), 140 S. Ct. 696 (2020).

Nunc pro tunc orders by district courts are not some Orwellian vehicle for revisionist history that create facts that never occurred in fact; put plainly, the court cannot make the record what it is not. [Roman Catholic Archdiocese of San Juan, Puerto Rico v. Acevedo Feliciano](#), 140 S. Ct. 696 (2020).

## [END OF SUPPLEMENT]

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### Footnotes

- 1 U.S.—[Edwards v. I.N.S.](#), 393 F.3d 299 (2d Cir. 2004).
- Ind.—[Brimhall v. Brewster](#), 835 N.E.2d 593 (Ind. Ct. App. 2005).
- Iowa—[Beyond the Garden Gate, Inc. v. Northstar Freeze-Dry Mfg., Inc.](#), 526 N.W.2d 305, 26 U.C.C. Rep. Serv. 2d 140 (Iowa 1995).

Ohio—Torres v. Sears, Roebuck & Co., 68 Ohio App. 2d 87, 22 Ohio Op. 3d 99, 427 N.E.2d 32 (8th Dist. Cuyahoga County 1980).

# **Jurisdiction**

When acting nunc pro tunc, a court does not reacquire jurisdiction over the case but merely corrects the record under the adopted fiction that order relates back to the date of the court's original action.

Va.—Davis v. Mullins, 251 Va. 141, 466 S.E.2d 90 (1996).

2 Fla.—In re Riha's Estate, 369 So. 2d 404 (Fla. 2d DCA 1979).

Md.—Sapero & Sapero v. Bel Air Plumbing & Heating Contractors, Inc., 41 Md. App. 251, 396 A.2d 317 (1979).

Utah—Horne v. Horne, 737 P.2d 244 (Utah Ct. App. 1987).

3 Neb.—Fay v. Dowding, Dowding & Dowding, 261 Neb. 216, 623 N.W.2d 287 (2001).

Or.—State ex rel. Juvenile Dept. of Multnomah County v. Dreyer, 328 Or. 332, 976 P.2d 1123 (1999).

4 U.S.—Matter of Singson, 41 F.3d 316 (7th Cir. 1994).

Iowa—Beyond the Garden Gate, Inc. v. Northstar Freeze-Dry Mfg., Inc., 526 N.W.2d 305, 26 U.C.C. Rep. Serv. 2d 140 (Iowa 1995).

Neb.—Continental Oil Co. v. Harris, 214 Neb. 422, 333 N.W.2d 921 (1983).

R.I.—DeCarli v. Webber, 784 A.2d 288 (R.I. 2001).

Va.—Jefferson v. Com., 269 Va. 136, 607 S.E.2d 107 (2005).

5 Ark.—Dickey v. Clark, 192 Ark. 67, 90 S.W.2d 236 (1936).

Ind.—Cotton v. State, 658 N.E.2d 898 (Ind. 1995).

Iowa—Beyond the Garden Gate, Inc. v. Northstar Freeze-Dry Mfg., Inc., 526 N.W.2d 305, 26 U.C.C. Rep. Serv. 2d 140 (Iowa 1995).

Kan.—Victory Life Ins. Co. v. Freeman, 145 Kan. 296, 65 P.2d 559 (1937).

Mich.—Magoun v. Walker, 286 Mich. 686, 282 N.W. 868 (1938).

Neb.—Andersen v. American Family Mut. Ins. Co., 249 Neb. 169, 542 N.W.2d 703 (1996).

Okla.—Hines v. Armstrong, 1938 OK 55, 182 Okla. 344, 77 P.2d 671 (1938).

6 Ind.—Brimhall v. Brewster, 835 N.E.2d 593 (Ind. Ct. App. 2005).

Neb.—Interstate Printing Co. v. Department of Revenue, 236 Neb. 110, 459 N.W.2d 519 (1990).

7 U.S.—Justice v. Town of Cicero, Ill., 682 F.3d 662 (7th Cir. 2012), subsequent determination, 468 Fed. Appx. 642 (7th Cir. 2012).

Ind.—Russell v. State, 428 N.E.2d 1271 (Ind. Ct. App. 1981).

Ky.—Harden v. Com., 885 S.W.2d 323 (Ky. Ct. App. 1994).

- 8 Md.—*Sapero & Sapero v. Bel Air Plumbing & Heating Contractors, Inc.*, 41 Md. App. 251, 396 A.2d 317 (1979).
- 9 Neb.—*Larson v. Bedke*, 211 Neb. 247, 318 N.W.2d 253 (1982), opinion supplemented, 212 Neb. 134, 322 N.W.2d 367 (1982).
- 10 S.C.—*Ex parte Strom*, 343 S.C. 257, 539 S.E.2d 699 (2000).
- Wis.—*Strawser v. Strawser*, 126 Wis. 2d 485, 377 N.W.2d 196 (Ct. App. 1985).
- Ind.—*State v. Daniels*, 680 N.E.2d 829 (Ind. 1997).
- U.S.—*Matter of Singson*, 41 F.3d 316 (7th Cir. 1994).
- 10 Md.—*Sapero & Sapero v. Bel Air Plumbing & Heating Contractors, Inc.*, 41 Md. App. 251, 396 A.2d 317 (1979).
- Mont.—*Winn v. Winn*, 200 Mont. 402, 651 P.2d 51 (1982) (overruled on other grounds by, *Green v. Gerber*, 2013 MT 35, 369 Mont. 20, 303 P.3d 729 (2013)).
- Okla.—*Smiley v. State*, 51 Okla. Crim. 364, 1 P.2d 829 (1931).
- 11 Ind.—*Ford v. State*, 180 Ind. App. 673, 390 N.E.2d 676 (1979).
- 12 Ariz.—*American Sur. Co. of N.Y. v. Mosher*, 48 Ariz. 552, 64 P.2d 1025 (1936).
- Ind.—*Cotton v. State*, 658 N.E.2d 898 (Ind. 1995).
- Mo.—*McGuire v. Kenoma, LLC*, 447 S.W.3d 659 (Mo. 2014).
- Va.—*Cutshaw v. Cutshaw*, 220 Va. 638, 261 S.E.2d 52 (1979).
- 13 Ind.—*Huffman v. Huffman*, 424 N.E.2d 456 (Ind. Ct. App. 1981).
- 14 Okla.—*Lamb v. Alexander*, 1918 OK 116, 74 Okla. 250, 179 P. 587 (1918).
- Vt.—*In re Prouty's Estate*, 105 Vt. 66, 163 A. 566 (1933).
- 15 Vt.—*In re Prouty's Estate*, 105 Vt. 66, 163 A. 566 (1933).
- 16 Neb.—*Continental Oil Co. v. Harris*, 214 Neb. 422, 333 N.W.2d 921 (1983).